UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

CITIZENS FOR SQUIRREL POINT,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 03-193-P-H***
	)	
SQUIRREL POINT ASSOCIATES, et al.,	***)***	
	)	
Defendants	***)***	

RECOMMENDED DECISION ON MOTION TO DISMISS

Defendant Squirrel Point Associates has moved to dismiss the complaint in this action pursuant to Fed. R. Civ. P. 12(b)(1), contending that the plaintiff lacks standing. Motion by Defendant Squirrel Point Associates to Dismiss Complaint, etc. ("Motion") (Docket No. 17) at 1. Two of the remaining defendants, Leonard Picotte and Sandra Whiteley, have joined in the motion. Docket No. 18. The United States Coast Guard, the final defendant, has not. I recommend that the court deny the motion.

I. Applicable Legal Standard

When a defendant moves to dismiss pursuant to Rule 12(b)(1), the plaintiff has the burden of demonstrating that the court has jurisdiction. *Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8, 10 (1st Cir. 1991); *Lord v. Casco Bay Weekly, Inc.*, 789 F. Supp. 32, 33 (D. Me. 1992). The court does not draw inferences favorable to the pleader. *Hogdon v. United States***,** 919 F. Supp. 37, 38 (D. Me. 1996). For the purposes of a motion to dismiss under Rule 12(b)(1) only, the moving party may use affidavits and other matter to support the motion. The plaintiff may establish the actual existence of subject-

matter jurisdiction through extra-pleading material. 5A C. Wright & A. Miller, *Federal Practice and Procedure* § 1350 at 213 (2d ed. 1990); *see Hawes v. Club Ecuestre el Comandante*, 598 F.2d 698, 699 (1st Cir. 1979) (question of jurisdiction decided on basis of answers to interrogatories, deposition statements and an affidavit).

II. Factual Background

The complaint includes the following relevant factual allegations. The plaintiff, Citizens for Squirrel Point ("CSP"), is a Maine nonprofit corporation. Complaint and Request for Declaratory Judgment ("Complaint") (Docket No. 1) ¶ 2. Defendant Squirrel Point Associates is also a Maine nonprofit corporation. *Id*. ¶ 3. Defendants Leonard Picotte and Sandra Whiteley are residents of Virginia. *Id*. ¶ 4. Individual members of CSP live in the vicinity of Squirrel Point Light, frequently pursue recreational activities on its grounds and will suffer economically due to their property values being diminished if the relief they seek is not granted. *Id*. ¶ 8.

The Coast Guard Authorization Act of 1996, P.L. 104-324, § 1001, allowed the real estate and improvements known as Squirrel Point Light to be transferred to Squirrel Point Associates on February 12, 1998, without payment or consideration, but subject to the terms and conditions listed in § 1001. *Id*. ¶ 10. The terms and conditions listed in § 1001(b)(2)(A) state that "all right, title and interest" in Squirrel Point Light "shall immediately revert to the United States if (A) the property, or any part of the property — (i) ceases to be used as a nonprofit center for the interpretation and preservation of maritime history . . .; or (iii) ceases to be maintained in a manner consistent with the provisions of the National Historic Preservation Act

of 1996[1] (16 U.S.C. § 470 *et seq*.)." *Id*. ¶ 11. These terms and conditions are listed in the quitclaim deed by which the property was conveyed. *Id*. ¶¶ 12-14.

The Coast Guard Authorization Act of 1996 states that Squirrel Point Light must be "maintained in a manner consistent with the provision of the National Historic Lighthouse Preservation Act of 1996 (16 U.S.C. § 470 *et seq*.)," now amended to include the National Historic Lighthouse Preservation Act of 2000. *Id*. ¶ 15. On October 8, 2002 the Maine Historic Preservation Commission stated in a letter to Squirrel Point Associates that eleven tasks must be completed by September 1, 2003 in order for Squirrel Point Light to reach compliance with the National Historic Lighthouse Preservation Act. *Id*. ¶ 16. In 2003, Squirrel Point Associates signed a contract to sell Squirrel Point Light to defendants Picotte and Whiteley. *Id*. ¶ 17.

After February12, 1998 Squirrel Point Light never was used and is not now used as a nonprofit center for the interpretation and preservation of maritime history, *id*. ¶ 22.; never was maintained and is not now maintained in a manner consistent with the provisions of the National Historic Lighthouse Preservation Act, *id*. ¶ 23; never was used and is not now used for educational, historic, recreational, cultural and wildlife conservation programs for the general public as required by the terms of the quitclaim deed and the Coast Guard Authorization Act of 1996, *id*. ¶ 28; and never was maintained and is not now maintained in a manner consistent with the provisions of the National Historic Preservation Act, *id*. ¶ 29.

The plaintiff seeks entry of judgment declaring that Squirrel Point Associates has violated the Coast Guard Authorization Act, the National Historic Preservation Act and the terms of the deed and that title to Squirrel Point Light has reverted to the Coast Guard. *Id*. at 6-7, 8.

[1] The complaint appears to use the titles "National Historic Preservation Act" and "National Historic Lighthouse (*continued on next page*)

III. Discussion

The moving defendants contend that the complaint fails to show that the plaintiff has standing to bring this action. "While defendants may prefer highly detailed factual allegations, a generalized statement of facts is adequate so long as it gives the defendant sufficient notice to file a responsive pleading." *Langadinos v. American Airlines, Inc.*, 199 F.3d 68, 72 (1st Cir. 2000). When a plaintiff's claim is not of a type subject to a heightened pleading requirement, "it is enough for a plaintiff to sketch an actionable claim by means of a generalized statement of facts from which the defendant will be able to frame a responsive pleading." *Garita Hotel Ltd. P'ship v. Ponce Fed. Bank*, 958 F.2d 15, 17 (1st Cir. 1992) (citation and internal quotation marks omitted).[2]

The basic prerequisites of standing are three: (i) an injury in fact; (ii) a causal connection between the injury and the conduct complained of; and (iii) a "likelihood" that the injury can be redressed by the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *Id.* at 561 (citation and internal quotation marks omitted). There are three additional requirements when the plaintiff is an association asserting rights on behalf of its members: (i) some members must have standing to sue in their own right; (ii) the members' interest in the suit must be germane to the organization's purpose; and (iii) the claim asserted and the relief requested must not require the individual participation of those

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Preservation Act" interchangeably.

[2] The moving defendants incorrectly cite *United States v. AVX Corp*., 962 F.2d 108 (1st Cir. 1992), as setting the standard for the specificity of standing allegations. Motion at 4. The holding in *AVX* affects standing allegations only with regard to intervenors. *See Sea Shore Corp. v. Sullivan*, 158 F.3d 51, 54-55 & n.3 (1st Cir. 1998). Judge Carter of this court appeared to support the moving defendants' interpretation of *AVX* in *Risinger v. Concannon*, 117 F.Supp.2d 61, 68 (D. Me. 2000), but that opinion does not mention the First Circuit's subsequent narrowing of *AVX* in *Sea Shore*.

members in the suit. *International Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. Brock*, 477 U.S. 274, 282 (1986). The moving defendants address only the elements of associational standing.

The moving defendants first contend that the complaint does not show that some of the plaintiff's members would themselves have standing to sue. Motion at 5-9. Specifically, they assert that "[t]here is no allegation that any member has suffered any concrete, particularized injury. There is no suggestion that any injury would be caused to a particular person as opposed to the general public," Motion at 7; "[t]here is no allegation of causation in the Complaint. There is no suggestion how reversion of the title to the property will benefit or prevent harm to any Citizens' member in a particularized way," Motion at 8; and "the Preservation Act does not create subject matter jurisdiction," *id*.

In response, the plaintiff identifies "three separate categories of 'injuries in fact' suffered by the Plaintiff and its members:"

> (1) economic injuries to property values due to the loss of the public benefits associated with the Light; (2) non-economic injuries based upon the loss of the multiple non-profit, historical, educational, recreational, cultural, conservational and other uses of the Light; and (3) the loss of procedural rights that might otherwise be exercised against the Coast Guard or other owner . . . of the Light.

Plaintiff's Objection to Defendants' Motion to Dismiss, etc. ("Opposition") (Docket No. 20) at 6. The moving defendants dismiss the plaintiff's argument as conclusory, relying on the "heightened standard" of pleading that they erroneously ascribe to the First Circuit; characterize the injury alleged as generalized rather than direct; and assert that there is no applicable procedural safeguard to be enforced under the circumstances of this case. Reply by Defendant Squirrel Point Associates in Further Support of Its Motion to Dismiss, etc. ("Reply") (Docket No. 22) at 4-7.

In order to be an "injury in fact," the injury at issue must be concrete and particularized; it must be personal to the plaintiff but may be shared by many others, so long as it is not common to everyone. *Dubois v. United States Dep't of Agric.*, 102 F.3d 1273, 1281 (1st Cir. 1996). It must be actual or imminent, distinct and palpable; this requirement may be satisfied by environmental or aesthetic injuries. *Id.* "The injury need not be 'significant'; a 'small' stake in the outcome will suffice, if it is 'direct.'" *Id*. (citation omitted). *See also Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 154 (1970) (standing may stem from aesthetic, conservational and recreational interests as well as economic values); *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972) (adverse effect on scenery, natural and historic objects and wildlife of park and impairment of enjoyment of park for future generations may amount to injury in fact sufficient for standing).

Here, the complaint alleges that individual members of the plaintiff live in the vicinity of Squirrel Point Light and frequently pursue recreational activities on its grounds, Complaint ¶ 8; the value of property owned by individual members of the plaintiff who live in the vicinity of Squirrel Point Light will be diminished if its requested relief is not granted, *id*.; the terms and conditions of the statute authorizing the transfer of Squirrel Point Light to SPA require its use as a nonprofit center for the interpretation and preservation of maritime history and its maintenance in a manner consistent with the provisions of the National Historic Preservation Act, *id*. ¶ 11; the terms of the statute also require Squirrel Point Light to be used for educational, historic, recreational, cultural and wildlife conservation programs for the general public, *id*. ¶ 13; and Squirrel Point Light has not been so used or maintained by SPA, *id*. ¶¶ 22-23, 28-29, 36. In an affidavit submitted with the plaintiff's opposition to the motion to dismiss, Lee Johnson, president of the plaintiff, states that 48 members of the organization own property in Arrowsic, Maine, where Squirrel Point Light is located, Affidavit of Lee Johnson ("Johnson Aff.") (attached to Docket No. 20) ¶¶ 2-3; all of the

property owners at the end of Bald Head Road, which is in close physical proximity to and the road access point for Squirrel Point Light, are members of the plaintiff, *id*. ¶ 3; Johnson has used and wishes to continue to use Squirrel Point Light for recreational purposes and aesthetic enjoyment, *id*. ¶ 5; development of the programs required by the statute and deed would benefit Johnson, *id*.; and the location of Squirrel Point Light adjacent to Johnson's property was a material consideration in Johnson's decision to purchase that property, *id*. ¶ 9. These assertions, supplemented by Johnson's testimony, are more than sufficient to allege injury in fact for pleading purposes. *See generally Puerto Rico Campers' Ass'n v. Puerto Rico Aqueduct & Sewer Auth.*, 219 F.Supp.2d 201, 210-12 (D. P.R. 2002); *Preservation Coalition of Erie County v. Federal Transit Admin.*, 129 F.Supp.2d 551, 561 (W.D. N.Y. 2000). There is no need to consider the plaintiff's alternative argument based on procedural rights.

The defendant also mentions the causation element of the standing test, although in terms that actually appear to encompass only the redressability element. Contrary to the defendant's contention, reasonable inferences may be drawn from the allegations in the complaint to the effect that the alleged injuries in fact have been caused by the defendant's failure to comply with the terms of the authorizing statute and deed and that reversion of title to the property to the Coast Guard will address the injuries and benefit members of the plaintiff. *See Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977) ("If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured." (Citation omitted.)). Nothing further is required.[3] *See*,

[3] The defendant asserts that "[i]t is the burden of [the plaintiff] to show that there is substantial likelihood that the relief requested will result in future compliance with applicable laws by a third party and by promoting enforcement with a deed running directly between the grantor and the new grantee." Reply at 8. Assuming *arguendo* that this is a correct statement of the plaintiff's burden, this argument might be made in support of a motion for summary judgment. It is not (*continued on next page*)

e.g., Allandale Neighborhood Ass'n v. Austin Transp. Study Policy Adv. Comm., 840 F.2d 258, 262-64 (5th Cir. 1988).

The defendant's argument that "the Preservation Act does not create subject matter jurisdiction," Motion at 8, is based on an assertion that the complaint does not allege that the plaintiff or any of its members "have any interest in the preservation of the Squirrel Point light house," *id*. The only statutory section cited by the defendant, 16 U.S.C. § 470(b), *id*., states, *inter alia*, that the preservation of the nation's historic heritage "is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained . . . for future generations," 16 U.S.C. § 470(b)(4). The complaint alleges that the defendant failed to comply with the Act as required. Complaint ¶¶ 23, 29, 36. A reasonable inference may be drawn from the allegations of the complaint, taken as a whole, that the plaintiff and its members have an interest in the preservation of Squirrel Point Light. In addition, Johnson asserts such an interest, Johnson Aff. ¶ 5. Nothing in the case law cited by the defendant requires a different outcome on this issue. *Cobble Hill Ass'n v. Adams*, 470 F. Supp. 1077, 1090 (E.D.N.Y. 1979), holds that the National Historic Preservation Act "deals with such effects as 'may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural character that qualifies the property under the National Register criteria,'" quoting 36 C.F.R. § 800.8. For purposes of a motion to dismiss, the existence of such effects may reasonably be inferred from the allegations of the complaint. Both *Pye v. United States*, 269 F.3d 459, 467-68 (4th Cir. 2001), and *Lujan*, 504 U.S. at 572 n.7, deal with standing based on procedural rights, not with subject-matter jurisdiction under the National Historic Preservation Act.

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appropriate in connection with a motion to dismiss, where the only issue is the adequacy of the pleadings.

Having concluded that the plaintiff has adequately alleged standing of one or more of its members to bring this action, I turn to the other requirements of associational standing, that "the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). The defendant contends that the complaint is fatally deficient in both respects. Motion at 9-10. While the complaint does not include an allegation setting forth the purpose of the plaintiff, no reasonable inference may be drawn that the interests at stake are not germane to its purpose. Any possible deficiency in this regard is eliminated by Johnson's affidavit, which states that the purpose of the organization "is to ensure that Squirrel Point Light in Arrowsic, Maine is used in compliance with the terms of its 1998 deed and with all applicable federal and state laws and regulations." Johnson Aff. ¶ 2. Without citation to authority, the defendant contends that the plaintiff must allege specifically that the participation of its individual members in the action is unnecessary and why, or, in the alternative, that individual members must be joined because "[t]he only benefits accruing to anyone from this litigation will be benefits to the individual members . . . ." Motion at 9. *Warth v. Seldin*, 422 U.S. 490 (1975), the only authority cited by the defendant in support of the latter argument, deals with actions in which money damages are sought, *id*. at 515-16; this action seeks only declaratory and injunctive relief. In addition, it is not possible to conclude from the allegations in the complaint that the benefits resulting from this litigation will inure only to individual members of the plaintiff. The defendant's first argument apparently relies on its interpretation of First Circuit authority as requiring a heightened level of specificity in pleading standing, Motion at 9, which I have rejected. The argument also exalts form over substance to an unsupportable degree. A reasonable inference that participation in this action of the plaintiff's 84 individual members, three

of whom are corporations, Johnson Aff. ¶¶ 3-4, is unnecessary may be drawn from the allegations in the complaint.

IV. Conclusion

For the foregoing reasons, I recommend that the defendant's motion to dismiss be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum and request for oral argument before the district judge, if any is sought, within ten (10) days after being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 4th day of December 2003.

/s/ David M. Cohen
David M. Cohen
United States Magistrate Judge

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